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April 11, 1995

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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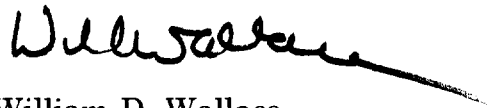
RE: IB Docket No. 95-22; RM-8355 & RM-8392

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Loral/QUALCOMM Partnership, L.P., are an original and nine copies of its "Comments" in the above-referenced proceeding.

Should there be any questions regarding this matter, please communicate with this office.

Respectfully submitted,



William D. Wallace

Enclosures

cc: Scott Blake Harris
Tom Tycz
Cecily Holiday
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Market Entry and Regulation of)
Foreign-Affiliated Entities)
_____)

IB Docket No. 95-22

RM-8355, RM-8392

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APR 11 1995

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

To: The Commission

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COMMENTS OF LORAL/QUALCOMM PARTNERSHIP, L.P.

Pursuant to Section 1.415 of the Commission's Rules, Loral/QUALCOMM Partnership, L.P. (LQP), hereby submits its initial comments on the Notice of Proposed Rule Making, FCC 95-53 (released Feb. 17, 1995) (NPRM), in this proceeding.¹ In the NPRM, the Commission has proposed new policies to apply to (1) applications of foreign-affiliated carriers for authority under Section 214 of the Communications Act of 1934, as amended, to provide international facilities-based service in the United States and (2) public interest determinations under Section 310(b)(4) of the Act with regard to foreign equity investment in U.S. companies.

Although LQP has been authorized to provide MSS on a non-common carrier basis, and the Commission did not propose to apply the policies in the NPRM to non-common carrier facilities (NPRM, ¶ 83), LQP has a substantial

¹ LQP was recently authorized to construct, launch and operate GLOBALSTAR, a low-earth orbiting satellite system, to provide Mobile-Satellite Service (MSS) in both domestic and global markets. See Loral/Qualcomm Partnership, L.P., DA 95-128 (released Jan. 31, 1995).

interest in the Commission's policies with regard to encouraging open and competitive international markets for U.S. tele-communications companies.

The proposed policies implicate two critical areas of interest for all U.S. telecommunications service providers: access to foreign markets for rights to provide service, and access to foreign equity investments for U.S. licensees.

LQP believes that the policies proposed in the NPRM would improve the competitive position of U.S. telecommunications companies in global markets and facilitate implementation of international MSS systems such as GLOBALSTAR. Accordingly, LQP recommends that the Commission adopt an "effective market access" standard for consideration of the public interest under Sections 214 and 310(b)(4) of the Act.

I. THE FCC HAS THE AUTHORITY TO CONSIDER RECIPROCAL MARKET ACCESS IN ITS PUBLIC INTEREST DETERMINATIONS.

As an initial matter, the Commission seeks comment on the scope of its jurisdiction to consider the openness of foreign markets in order to achieve the goal of competition in international telecommunications markets. NPRM, ¶ 39. Just 10 years ago, the Commission noted in a rulemaking on competition in the international marketplace that:

In administering the Communications Act, 47 U.S.C. Section 151, *et seq.*, the Commission's directive is to ensure the availability to United States users of "rapid, efficient, nation-wide, and world-wide wire and radio communication services with adequate facilities at reasonable charges." In pursuing these goals the Commission has "broad discretion in choosing how to regulate." Competition and marketplace

forces are clearly factors to take into consideration when regulating in the public interest.

International Competitive Carrier Policies, 102 FCC 2d 812, 822 (1985) (footnotes and citations omitted), recon. denied, 60 RR 2d 1435 (1986). In that proceeding, the Commission expressed concern about the openness of international markets, and established a policy for attaching reciprocity conditions on the grant of Section 214 applications. Id. at 842-43 ("Under these requirements, we could, for example, condition an authorization granted to a foreign owned carrier to provide service between the U.S. and the jurisdiction of its parent or some other jurisdiction within its parent's control on the granting of operating agreements to additional U.S. carriers for a particular service and traffic path").

The concerns which motivated the Commission's international carrier policies in 1985 remain today. Moreover, now, as then, Congress' directive to administer the Act so as to ensure the availability of efficient and effective "world-wide" telecommunications facilities to users in the United States supports the Commission's consideration of competition and open market conditions as entry criteria for foreign carriers and investors into U.S. markets.

II. **THE COMMISSION SHOULD ESTABLISH A RECIPROCAL MARKET ACCESS STANDARD UNDER SECTION 214 FOR FOREIGN-AFFILIATED TELECOMMUNICATIONS COMPANIES.**

LQP agrees with the goals set forth in the NPRM of promoting effective competition in global telecommunications markets, preventing anticompetitive conduct in these markets directed toward U.S. carriers, and encouraging foreign

governments to open their telecommunications markets to U.S. companies. As the Commission recognizes, telecommunications is a global industry. Low-cost telecommunications services are now available to broad segments of the globe, and commercial customers in the United States expect that international service will be delivered in a manner equivalent to domestic service. Moreover, U.S. companies are developing technologies, such as LEO MSS systems, which will further extend the availability of low-cost, global telecommunications services to subscribers in the United States and in foreign markets.

The convenience and benefits of such services can be severely restricted or defeated -- to the detriment of U.S. consumers -- if foreign markets are closed to U.S. service providers. The Commission proposes to encourage the development of open foreign markets by considering reciprocal market access in evaluating Section 214 applications for entry of foreign facilities-based carriers into U.S. markets. LQP recommends that the Commission adopt this policy as an important step toward eliminating such restrictions.

However, the Commission should not restrict its consideration of "effective market access" simply to "whether U.S. carriers can offer in the foreign country international facilities-based services substantially similar to those the foreign carrier seeks to offer in the United States." NPRM, ¶ 40. International telecommunications services are provided over a variety of facilities. In the near future, such facilities may include, for example, at least three U.S.-based LEO MSS systems. Such facilities in a foreign country may serve different functions

and needs than technically identical facilities in the United States.² In order to capture a true picture of the foreign market, the Commission should analyze whether the degree of openness extends broadly over multiple service segments, and consider MSS and other communications services in determining "effective market access."

The proposed revision to the Commission's policies under Section 214 provides an appropriate means to bolster the new MSS industry. The Commission has recognized that the U.S. Big LEO systems have "the potential to provide not only a variety of new services to users in the United States, but to provide integrated communications services to all parts of the world, including those that are now grossly underserved." MSS Report & Order, 76 RR 2d 202, 208 (1994). While the Commission has taken major steps toward implementing these new and enhanced international services, the success of the U.S. Big LEO systems still requires that their service providers obtain rights to install gateway stations in foreign countries in order to access the Public Switched Telephone Network (PSTN) in those markets.³ Discriminatory conduct against Big LEO systems, or

² In certain foreign countries, LEO systems have the potential to provide a basic telecommunications infrastructure. Thus, international MSS systems may be used to provide service in a foreign country analogous to the PSTN in the United States.

³ GLOBALSTAR satellites operate as simple frequency transmitting devices in space, relaying signals from mobile subscriber units to gateway earth stations. At the gateway station, the calls are introduced to the PSTN. By complementing existing telecommunications facilities, GLOBALSTAR can provide low-cost, efficient service to users worldwide.

carriers providing space segment capacity and connections to terrestrial networks, would have an adverse effect on the development of this new industry. For example, if a foreign country were to deny GLOBALSTAR an authorization to use the 1.6/2.4 GHz bands for MSS in order to provide exclusive access to a monopoly MSS system, it could have the effect of depriving the U.S. public of "world-wide" cellular-like telephone service and limiting an industry which will create jobs in the United States and promote U.S. technology overseas.

Furthermore, encouraging effective market access for satellite-based service providers in foreign markets is consistent with current U.S. policy. With respect to the INMARSAT-P system proposed by INMARSAT, the United States has stated that a condition of its participation is that "a fair and competitive environment and a 'level playing field' shall be established and maintained for all mobile satellite communications networks, including nondiscriminatory access to national markets for all mobile satellite communications networks, subject to spectrum coordination and availability." Letter of Amb. Vonya B. McCann to Mr. Ronald J. Mario, at App. ¶ 9 (dated Nov. 18, 1994).

Accordingly, in order to promote development of all U.S.-based international facilities, including Big LEO systems, LQP recommends that the Commission's Section 214 review take into account discriminatory and/or anticompetitive behavior in segments of foreign carriers' telecommunications markets other than merely that equivalent to the service sought to be provided in the United States. Consideration of such conduct in Section 214 applications would promote effective

market access by demonstrating that the United States ultimately will not tolerate discriminatory conduct by foreign countries toward any United States licensed facilities or class of service provider.

III. THE COMMISSION SHOULD USE SECTION 310(b)(4) TO PROMOTE OPEN INTERNATIONAL TELECOMMUNICATIONS MARKETS.

LQP also supports the Commission's proposal to consider "effective market access" in making its public interest determination for common carrier authorizations pursuant to Section 310(b)(4) of the Act. NPRM, ¶¶ 93-96. Although LQP has been authorized to operate as a non-common carrier, see Loral/Qualcomm Partnership, L.P., DA 95-128, ¶ 22 (released Jan. 31, 1995), and so, is not directly affected by Section 310(b), its non-common carrier status was not certain at the time LQP applied for its MSS license. As a result, LQP has had to address the constraints of Section 310(b) in seeking investments to defray the \$1.5 billion cost of the GLOBALSTAR space segment.

Section 310(b)(4) grants the Commission authority to determine whether precluding a level of equity participation by foreign investors in the corporate parent of an FCC-licensed common carrier above the 25% statutory benchmark would serve the public interest. This statute is perceived by foreign countries as a barrier to entry into U.S. markets and "as a reason to deny U.S. companies entry into their markets." S. Rep. No. 23, 104th Cong., 1st Sess., 33 (Mar. 30, 1995). Chairman Hundt recently recognized: "The negative foreign perception of Section 310 impedes the U.S. Government's efforts to demonstrate the openness of the

U.S. market and to advance the goal of global liberalization." Written Statement of Reed E. Hundt before the House Subcommittee on Commerce, Trade and Hazardous Materials, at 5 (Mar. 3, 1995). If the Commission desires to encourage foreign countries to open their markets to U.S. telecommunications service providers through its administration of Section 214 applications, then it must also apply Section 310(b)(4) in a manner which would promote opening U.S. markets to foreign companies where reciprocity is established.⁴

Using Section 310(b)(4) to promote open telecommunications markets would benefit international telecommunications facilities where participation by foreign investors is not only natural because of the international scope of services but also useful in obtaining access to foreign markets. For example, because Big LEO systems are "inherently global, and extremely expensive," MSS Report & Order, 76 RR 2d at 238, ¶ 181, the Big LEO applicants have been pursuing investments from international sources. In finding that the Big LEO systems should be regulated as non-common carriers, the Commission itself recognized that Section 310(b)(4) could impose burdensome constraints if the systems were authorized to operate as common carriers. See id. Moreover, the Commission noted that "it is reasonable to expect that investors will want to be involved with system operation, particularly if the system will be accessed from the investor's jurisdiction." Id. at 238-39.

⁴ Telecommunications legislation currently under consideration in Congress may give the Commission the explicit authority for such a policy. See S. 652, 104th Cong., 1st Sess., § 105 (Mar. 30, 1995).

Such investor participation can provide numerous benefits:

- Access to Capital. Opening U.S. markets to larger equity investments by foreign companies would provide access to substantial capital for U.S. telecommunications companies, which can be used to improve domestic services. See, e.g., MCI Communications Corp., 75 RR 2d 1024, 1029, ¶ 23 (1994) ("BT's substantial equity contribution will facilitate MCI's ability to expand and improve network services and products that it offers to American consumers, stimulating U.S. economic growth and creating new job opportunities").
- Promoting U.S. Services and Technology. Permitting greater participation in domestic common carrier licensees by foreign companies whose primary markets are open to U.S. service providers may create demand in the foreign companies' home markets for U.S. products and services.
- Access to Service Licenses. Many foreign investments will center on joint ventures between U.S. and foreign companies in facilities which can be used to provide international service. As the Commission noted for MSS Above 1 GHz service, the presence of the foreign operator in the venture may facilitate obtaining the needed licenses for such a venture in international markets. Cf. MSS Report & Order, 76 RR 2d at 239 ("We concur that this foreign participation is likely to improve the likelihood of receiving a grant of space station access by foreign administrations").

Given these public interest benefits, LQP recommends that the Commission encourage opening of foreign markets by evaluating "effective market access" as a

criterion in the public interest determination for common carrier licenses under Section 310(b)(4). As in evaluating applications pursuant to Section 214, LQP encourages the Commission to review the openness of broad segments of the international service markets in conducting this public interest determination.

IV. CONCLUSION

For the reasons set forth above, LQP recommends that the Commission adopt its "effective market access" policy for consideration of applications under Section 214 and Section 310(b)(4) of the Act for common carrier services.

Respectfully submitted,

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